

including reciprocal compensation arrangements. On the record before the Commission, bill and keep is the only reasonable and effective regulation to implement the LEC reciprocal compensation requirement of Section 251(b)(5).

c. Section 332 Gives the Commission Authority to Regulate LEC-CMRS Interconnection

Apart from their analysis of the 1996 Telecom Act, the LECs and the states argue that the Commission lacks authority to adopt bill and keep under Section 332, as LEC-CMRS interconnection is "intrastate."^{63/} Through Section 332, however, Congress gave the Commission plenary jurisdiction to preempt state regulation of LEC-CMRS interconnection, limiting state authority over CMRS to consumer protection matters. The adoption of bill and keep is consistent with this mandate.^{64/}

The Commission should exercise its authority to preempt state CMRS regulation and adopt bill and keep. First, the Commission has authority to preempt, and should preempt, any state regulation of LEC-CMRS interconnection if such regulation interferes with the federal right to interconnection established in Sections 201 and 332 and the Commission's policies implementing those statutes.^{65/} The comments make a clear record that the states are impeding the implementation of federal CMRS policies, ignoring the co-carrier status of CMRS, and denying mutual compensation to CMRS providers for

63. See, e.g., Comments of US West at 60-62; Comments of Bell Atlantic at 8.

64. See Comments of Cox at 35-42. Congress limited the states' jurisdiction by adopting 332 and amending Section 2(b) of the Communications Act at the same time to remove CMRS from the limits on the Commission's jurisdiction over intrastate telecommunications. *Id.* at 38 and n. 76, citing H.R. Rep. No. 103-111, 103rd Cong., 1st Sess., at 260.

65. See *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 368-369 (1986).

terminating LEC-originated traffic. NARUC and other commenters are simply wrong that there is no evidence of state interference with federal interconnection policies.^{66/}

Connecticut, for example, openly admits that it refuses to allow CMRS providers to receive mutual compensation for "intrastate" interconnection, despite the FCC's policies.^{67/} California takes the disregard of federal policy a step further, requiring cellular carriers to compensate LECs for *both* originating *and* terminating calls.^{68/} New York discriminates between CLECs and CMRS, even though both are co-carriers with the LECs, by allowing a CMRS provider to take advantage of the State's meet point rules only if it qualifies as a "full service, facilities-based" local exchange carrier; CMRS carriers do not meet this definition.^{69/}

Second, the Commission can also preempt state regulations under Section 2(b)(1) of the Communications Act if the components of the regulation cannot be separated into interstate and intrastate elements. CMRS-LEC interconnection is not segregable into interstate and intrastate elements. CMRS systems are increasingly operated without regard to state boundaries. Vanguard's description in its initial comments^{70/} of the impossibility of determining if certain calls are interstate or intrastate was echoed by several CMRS

66. See Comments of NARUC at 9; *see also* Comments of NYNEX at 22-23.

67. See Comments of Connecticut Department of Public Utility Control at 12-13.

68. See Comments of the State of California at 5 ("The cellular carrier pays separate rates for terminating traffic on the LEC's network and for the LEC terminating traffic on its network.").

69. See Comments of the State of New York Department of Public Service at 46 (a full-service carrier must provide universal service and basic telephone service to residential and Lifeline customers).

70. See Comments of Vanguard at 24-25, Exhibit A at ¶ 16.

providers.^{71/} And, as noted by Omnipoint Corporation, 43 of the 49 PCS Major Trading Areas ("MTAs") cross state boundaries.^{72/} Western Radio Services Company, an SMR provider in Oregon, reports that its mobile users can terminate calls in Washington, Idaho, Nevada, and California, as well as in Oregon, making it impossible to determine on Western's system whether the call is interstate or intrastate.^{73/} The record before the Commission compels the conclusion that LEC-CMRS interconnection cannot be separated along jurisdictional boundaries.

Third, Commission has already determined that Section 332 gave it the authority to require LECs to offer interconnection to CMRS providers "on reasonable terms and conditions."^{74/} It would be absurd then to prohibit the Commission from defining those "reasonable terms and conditions." In fact, it is the lack of such a definition that has led to the well-documented problems with the current system of LEC-CMRS interconnection. Based on the record before it, the Commission can conclude that bill and keep is the only method of compensation that will provide CMRS providers with interconnection on "reasonable terms and conditions."

71. See, e.g., Comments of Time Warner Communications Holdings at 25 ("Unlike the depreciation rates and methods at issue in *Louisiana PSC*, the use of cost allocation and accounting techniques to separate the interstate and intrastate spheres of jurisdiction for the purposes of establishing guidelines for CMRS-LEC interconnection is not feasible."); Comments of Western Radio Services Company at 6 ("It is impossible to determine on Western's system whether the call is interstate or intrastate.")

72. See, e.g., Comments of Omnipoint Corporation at 11-12.

73. Comments of Western Radio Services Co. at 6.

74. Notice at ¶ 1, citing *Implementation of Sections 3(n) and the 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411, 1497-98 (1994) ("*CMRS Second Report*").

III. Interconnection for the Origination and Termination of Interstate Interexchange Traffic

A. Recovery of cost of terminating IXC calls passed through LEC

The Commission requested comment on whether CMRS providers should be allowed to recover access charges, or some equivalent thereof, from IXCs for call termination.^{75/} It appears from the comments that, at present, all IXC calls terminated by CMRS carriers are passed through LECs. Consistent with the LECs near-universal refusal to honor the Commission's mutual compensation rules, CMRS providers do not recover any compensation from the LEC for terminating IXC calls passed through the LEC.^{76/}

While there is little support for having the Commission impose a separate charge on IXCs to compensate CMRS carriers for terminating IXC traffic passed through the LEC,^{77/} many commenters favor a requirement that the LEC compensate the CMRS carrier to the same extent it compensates a neighboring LEC for terminating an IXC call.^{78/} Such an arrangement is justified not only by current use by parties with equal bargaining power, but also because the CMRS provider is performing some of the LEC termination functions.^{79/} The LEC therefore should not keep the entire access charge.

75. See Notice at ¶ 116.

76. See, e.g., Comments of Airtouch at 56; Comments of Vanguard at 27-28.

77. See, e.g., Comments of PCIA at 28-29, Comments of New Par at 26; Comments of Sprint Spectrum at 51.

78. See, e.g., Comments of Sprint Spectrum at 51.

79. See Comments of the Personal Communications Industry Association at 28-29.

LECs oppose sharing a portion of the IXC access charge with CMRS providers. BellSouth, for instance, urges the Commission not to require compensation because CMRS providers can connect directly with IXC.^{80/} The same logic should apply, however, to connection of IXC calls between neighboring LECs, but these parties with equal bargaining power do, in fact, compensate each other.

B. There is No Need to Regulate Direct CMRS-IXC Interconnection

The initial comments support Vanguard's assertion that CMRS-IXC interconnection negotiations are successful due to the competition in both markets, and that there is no need for Commission regulation in this area. Among the commenting IXCs, only LDDS Worldcom asks that the Commission intervene in this market, arguing that cellular carriers have market power vis-a-vis the IXCs.^{81/} LDDS includes no examples of cellular or other CMRS carriers exercising this putative market power over IXCs, however, and no other commenter offers any evidence to support this assertion. On the contrary, most commenters describe IXC-CMRS negotiations as reasonable and free of market power on either side.^{82/}

80. See Comments of BellSouth Corp. at 37-38.

81. Comments of LDDS Worldcom at 3-7.

82. See Comments of PCIA at 28.

IV. CONCLUSION

The initial comments strongly support the Commission's proposal to adopt bill and keep for LEC-CMRS interconnection compensation. In fact, the record of the LECs' staggering overcharges for interconnection and persistent refusal to honor the Commission's mutual compensation rules *requires* a new system of LEC-CMRS interconnection. Bill and keep must also be extended to interconnection at any feasible point, or else it will not remove the ability of LECs to use their market power over CMRS providers and will not provide both carriers with fair and reasonable interconnection.

The Commission should extend the principle of bill and keep to fixed transport facilities as well, by requiring each carrier to construct and maintain its own facilities up to a mutually-agreeable meet point. This system, used in Washington State for LEC-CLEC compensation, will eliminate another opportunity for LECs to charge unreasonable costs to CMRS providers. These new interconnection rules should remain in place until there is competition in the local exchange market, at which time CMRS providers will be able to negotiate reasonable interconnection with the LECs.


The 1996 Telecom Act did not alter the Commission's authority to adopt bill and keep. The interconnection provisions of the new law cited in the LECs' initial comments govern LEC-LEC interconnection, not LEC-CMRS interconnection. Even were the Commission to find those provisions applicable to the LEC-CMRS context, its authority to promulgate rules under Section 251 of the Telecom Act would allow it to adopt bill and keep as the method to implement the LECs' statutorily-mandated obligation to provide reciprocal compensation. Section 332, combined with the ample record of state interference

with federal interconnection policy, gives the Commission the authority, if not the obligation, to preempt state regulation of LEC-CMRS interconnection.

Vanguard respectfully requests that the Commission immediately adopt the proposals contained in the *Notice*, with the modifications discussed above.

Respectfully submitted,

VANGUARD CELLULAR SYSTEMS, INC.

By: 
James F. Rogers
Steven H. Schulman
of LATHAM & WATKINS
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004
Its Attorneys

March 25, 1996